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Deneen, Charles Samuel

Special message of
Charles S. Deenen...

[Springfield]

[1911]

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No 14

SPECIAL MESSAGE

OF

CHARLES S. DENEEN

GOVERNOR

1911

ERRATA.

Paragraph 1 should read as follows:

1. The abolition of the State Board of Equalization and the substitution therefor of a permanent State Tax Commission to be appointed by the Governor by and with the advice and consent of the Senate to exercise the present powers of the State Board of Equalization and vested with the following additional powers over the subject of taxation for State and local purposes.

GOVERNOR'S SPECIAL MESSAGE TO THE GENERAL ASSEMBLY TRANSMITTING THE REPORT OF THE SPECIAL TAX COMMISSION.

STATE OF ILLINOIS, EXECUTIVE DEPARTMENT,
SPRINGFIELD, ILL., Jan. 31, 1911.

Gentlemen of the Forty-seventh General Assembly:

I transmit herewith to your Honorable Body the report of the Special Tax Commission appointed by me under the authority of an Act approved June 9, 1909.

The recommendations of the report embrace changes in our present revenue system and its administration as follows:

1. The abolition of the State Board of Equalization and the substitution therefor of a permanent State Tax Commission to consist of three persons to be appointed by the Governor by and with the advice and consent of the Senate, and vested with the following powers over the subject of taxation for State and local purposes:

(a) To prescribe forms for assessment books, uniform accounts and financial and statistical reports of local tax officials, with power to require reports and to examine books and accounts.

(b) To confer with, instruct and advise local assessors as to their duties, visiting each county as often as necessary and practicable.

(c) To require individuals and corporations to furnish information as to capital stock, assets and liabilities, etc., as required by law.

(d) To direct proceedings and prosecutions against public officials and officers or agents of corporations and others for neglect or failure to comply with the tax laws or orders of the Commission.

(e) To hear and determine appeals from the action of county boards of review, with power to summon witnesses to appear and give testimony and produce records, books and documents.

(f) To appoint special assessors and direct the reassessment of property in any taxing district where it appears, on complaint and after investigation, that the original assessment was not substantially just and equitable.

(g) To investigate at any time on its own initiative the efficiency of the administration of the tax and revenue laws; and for this purpose to have power to summon and examine witnesses on oath.

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(c) To require individuals and corporations to furnish information as to capital stock, assets and liabilities, etc., as required by law.

(d) To direct proceedings and prosecutions against public officials and officers or agents of corporations and others for neglect or failure to comply with the tax laws or orders of the Commission.

(e) To hear and determine appeals from the action of county boards of review, with power to summon witnesses to appear and give testimony and produce records, books and documents.

(f) To appoint special assessors and direct the reassessment of property in any taxing district where it appears, on complaint and after investigation, that the original assessment was not substantially just and equitable.

(g) To investigate at any time on its own initiative the efficiency of the administration of the tax and revenue laws; and for this purpose to have power to summon and examine witnesses on oath.

(h) To confer with the Governor on the subject of taxation and the administration of the tax laws, and to furnish him with such information relating thereto as he may require.

(i) To investigate the tax laws and their operation in other states and countries, and to recommend to the Legislature such changes in the revenue laws as seem expedient.

(j) To report biennially to the General Assembly and to the Governor its proceedings and decisions, with statistics of taxation and revenue, and recommendations.

(k) To make all necessary rules and regulations relating to procedure at its meetings and to carry out the purpose for which the board was created.

Accompanying the report is the draft of a bill creating the proposed State Tax Commission and prescribing its powers and duties.

Such permanent tax commissions were established in Indiana in 1891, in New York in 1896, in Michigan and Wisconsin in 1899, and, within the past five years, in New Jersey, Texas, Washington, Minnesota, Kansas, Alabama, Arkansas, Oregon and Ohio.

2. The Commission also recommends the amendment of article IX of the State Constitution by adding thereto section 14, reading as follows:

Section 14. From and after the date when this section shall be in force, the powers of the General Assembly over the subject matter of the taxation of personal property shall be as complete and unrestricted as they would be if sections 1, 3, 9 and 10 of this article of the Constitution did not exist: *Provided, however,* that any tax levied on personal property must be uniform as to the persons and property of the same class within the jurisdiction of the body imposing the same; and all exemption from taxation shall be by general law and shall be revocable by the General Assembly at any time.

This amendment, it will be observed, leaves the present constitutional provision with regard to the taxation of real estate, requiring that every person or corporation shall be taxed in proportion to the value of his holdings thereof, entirely unaffected.

The object of the amendment is the abolition of the restrictions placed upon the General Assembly by the present constitutional provisions, which require the taxation of all property in proportion to value upon a uniform basis, and to empower the General Assembly to classify for purposes of taxation the various kinds of personal property, tangible and intangible, and to devise special methods of taxing them, subject to the rule of uniformity in the taxation of all personal property of the same class within the same taxing jurisdiction.

The purpose of the amendment is to empower the General Assembly to provide a system for the assessment and taxation of personal property which will correct present notorious inequalities and more effectually reach certain classes of intangible personal property which, in practice, has been found difficult or practically impossible to reach under the present system.

The experience of this and other States shows that a more efficacious method for reaching personal property than that provided under the

general property tax must be devised if personal property, and especially intangible personal property, is to bear its just proportion of the burdens of taxation. The evasions of taxation by the owners of intangible personal property have become notorious. And yet as the taxation of intangible personal property at the rate now levied, upon the same basis as tangible personal property, would amount to the confiscation of one-quarter to one-half of the income, the temptation to evasion is great. The result is that such property either escapes taxation altogether, or, where imposed upon those who conscientiously obey the letter of the law, amounts to the imposition upon them of an inequitable and intolerable burden of taxation which is escaped by their less conscientious neighbors.

In other states, the conditions described have led to the abandonment of the attempt to tax this species of property under the general property tax and the substitution therefor of methods specially adapted to the taxation of each of the various classes of personal property. Thus, in Massachusetts, New York, New Jersey and Maryland, special taxes on corporations and on mortgage notes and other kinds of personal property are now used to a large extent and, to a more limited extent, in Ohio, Wisconsin and Minnesota.

In my recent biennial message, I submitted for your consideration the question of abolishing by a constitutional amendment the system of cumulative voting and the proposed amendment of the Constitution establishing the initiative and referendum. Under our Constitution, but one article of the Constitution can be amended at the same time. The abolition of the system of cumulative voting and the establishment of the initiative and referendum can be submitted at the same time, as they both affect article IV of the Constitution. The amendment suggested by the Special Tax Commission affects article IX and cannot be submitted with the other two amendments or with either of them. It is for your Honorable Body to determine the order of precedence between these constitutional amendments, or whether the amendments suggested and others require the calling of a constitutional convention by your Honorable Body and the submission to the people of our State of the matter of enacting a new State Constitution.

Accompanying the report of the Special Tax Commission are two valuable documents, one a comprehensive report on The Taxation and Revenue System of Illinois, prepared by Prof. John A. Fairlie, Ph. D., Associate Professor of Political Science, University of Illinois, the other on Illinois Tax Laws and Decisions, compiled and prepared by Albert M. Kales and Elmer M. Liessmann, in which the existing tax laws of Illinois and the decisions of the Supreme Court relating thereto have been classified and arranged in connection with the sections of the Constitution and statutes to which they refer and, wherever possible, under the different words or clauses of each section.

As first appointed, the Special Tax Commission consisted of Messrs. John P. Wilson, of Chicago; David Kinley, of Urbana; Ben. F. Caldwell, of Springfield; A. M. Craig, of Galesburg; A. P. Grout, of Winchester; Charles E. Merriam, of Chicago, and B. L. Winchell, of

Chicago. Before organization, Mr. Kimley resigned and Dr. Edmund J. James, President of the State University, was appointed in his place. In May, 1910, Mr. Merriam resigned and Mr. Harrison B. Riley was appointed in his place.

The splendid work which has been accomplished by the members of this Commission, as evidenced by its report and the documents accompanying it, merits the warmest commendation. The State is indebted to them for the performance of a task of such magnitude in a manner testifying at once to the experience and distinguished learning and ability which the members of the Commission have brought to the work entrusted to their care and to their unselfish devotion to the public service.

In conclusion I wish to commend this report and its accompanying documents to the earnest consideration of the General Assembly. In it your Honorable Body will find a wealth of information and of suggestion which will be of the greatest benefit in your deliberations upon the questions involved in the proposed revision of the revenue laws of the State.

Respectfully submitted,
CHARLES S. DENEEN,
Governor.

LETTER OF TRANSMITTAL.

LETTER OF TRANSMITTAL ADDRESSED TO THE GOVERNOR OF THE STATE,
ACCOMPANYING THE REPORT OF THE SPECIAL TAX COMMISSION.

SPRINGFIELD, Illinois, January 15, 1911.
To the Governor of the State of Illinois:

SIR: We, the undersigned members of the Special Tax Commission appointed by you under the provisions of the law passed by the last General Assembly of the State of Illinois, beg leave to submit the following:

1. Report of the Special Tax Commission.
2. Draft of a proposed constitutional amendment.
3. Draft of a law establishing a permanent State Tax Commission in place of the present State Board of Equalization.
4. Appendix to the Report.
5. Compilation of Tax Laws and Judicial Decisions of the State of Illinois.
6. Report on the Taxation and Revenue System of Illinois.

Respectfully submitted,
JOHN P. WILSON, *President,*
EDMUND J. JAMES, *Secretary,*
BEN F. CALDWELL,
A. M. CRAIG,
A. P. GROUT,
HARRISON B. RILEY,
B. L. WINCHELL.

REPORT OF THE SPECIAL TAX COMMISSION.

APPOINTED UNDER AN ACT OF THE FORTY-SIXTH GENERAL ASSEMBLY,
APPROVED JUNE 9TH, 1909.

Submitted to the Governor January 15th, 1911, with drafts of a proposal Constitutional amendment and a bill for an Act to create a State Tax Commission and to define the powers and duties thereof, and an Appendix.

January 15th, 1911.

To the Honorable Charles S. Deneen, Governor of the State of Illinois:

SIR: The Special Tax Commission appointed by you, in accordance with the provisions of an Act of the Forty-sixth General Assembly, approved June 9, 1909, "to inquire into the subject of taxation for State and local purposes, and the expediency of revising and amending the laws relating thereto," submits this report, with drafts of a proposed amendment to the Constitution of Illinois, and of a bill providing for the creation of a permanent State Tax Commission, which is recommended for the consideration of the General Assembly.

Accompanying this report, there are also submitted a Compilation of the Tax Laws and Judicial Decisions of the State of Illinois, and a descriptive and statistical report on the Taxation and Revenue System of Illinois, both of which have been prepared at the request of this Commission.

As first appointed, the Commission consisted of John P. Wilson, David Kinley, Ben F. Caldwell, A. M. Craig, A. P. Grout, Charles E. Merriam and B. L. Winehell. Before organization, Mr. Kinley resigned and Edmund J. James was appointed in his place. In May, 1910, Mr. Merriam resigned, and on July 14th, Harrison B. Riley was appointed in his place.

The members of the Commission met at your call in Springfield on the 14th day of April, 1910, and organized by the election of John P. Wilson as president and Edmund J. James as secretary.

Nine meetings of the Commission have been held. At the early meetings, plans for investigating the present revenue laws and their operation were formulated. Three public hearings were held, at which citizens of the State were invited to make suggestions for the consideration of the Commission. At the later meetings, reports,

complaints of defects in the present laws and proposals for changes in these laws have been carefully examined and discussed, resulting in the recommendations submitted herewith.

The several lines of work undertaken by the Commission may be presented in connection with each of the specific duties imposed on this body by the Act providing for its existence.

I—COMPILATION OF TAX LAWS AND JUDICIAL DECISIONS.

In accordance with the provisions of the law requiring a compilation of the existing tax laws and the decisions of the Supreme Court of Illinois relating thereto, the Commission engaged Professor Albert M. Kales of Northwestern University, to prepare this compilation, in association with Mr. Elmer M. Liesmann. The compilation is based on a study of the decisions of the Supreme Court of Illinois bearing on the constitutional provisions and statutes of Illinois relating to taxation. These decisions have been carefully classified, collated and sifted, so as to eliminate all irrelevant matter; and have been arranged in connection with the several sections of the Constitution and statutes to which they refer, and, whenever possible, under the different words or clauses of each section. In this way the sources for the construction of the State Constitution and Revenue Laws have been given as minutely and definitely as possible. The Special Assessment Acts and cases dealing with these Acts have not been included.

This compilation has been printed and is presented as an appendix to this report. It is believed that it will be found of great assistance to all tax and revenue officials, and also to others interested in the administration of the present revenue laws of this State.

II—REPORT ON THE TAXATION AND REVENUE SYSTEM OF ILLINOIS.

Under the provisions of the Act calling for the collection of statistics and other information relating to the operation of the present system of taxation in this State and authorizing the Commission to inquire into the systems of other states, the Commission has had prepared by its Chief Clerk, Professor John A. Fairlie, of the University of Illinois, a report on the Taxation and Revenue System of Illinois. This includes also a study of some features of the taxation systems of other states, especially the work of permanent State Tax Commissions and other State taxation officials and the Taxation of Corporations.

The descriptive and statistical report on the taxation system of Illinois has been based on a careful study of the revenue laws and the data published in the reports of the Auditor of Public Accounts, the State Board of Equalization and other State officials, with information from other sources. It includes a comprehensive series of tables, covering in some cases the entire period of the history of this State, showing the assessed valuation of various classes of property and comparisons with estimates of true value; the amount of State, county, city, school and

other local taxes; the proportion of State taxes paid by each county; special taxes, licenses and fees; and the total State revenues and expenditures.

III—COMPLAINTS AND DEFECTS—PUBLIC HEARINGS.

To carry out the provisions of the law making it the duty of the Commission to investigate complaints of illegal, unjust and excessive taxation, and to ascertain to what extent and in what manner the present system's defective, unequal and oppressive, the Commission, soon after its organization, issued a letter inviting statements of complaints and grievances and asking for suggestions as to proposed changes in the tax laws. This letter was widely published by the press of the State, and was also sent to the members of the Forty-sixth General Assembly, to State and local officials engaged in the administration of the tax laws, and to associations, corporations and individuals known to be interested in problems of taxation.

More than a hundred replies were received in response to this invitation. The various complaints, grievances and suggestions of proposed change in the tax laws were carefully examined, collated and digested; and these data were duly considered in the discussions of the Commission.

In addition to the complaints and suggestions received in writing, the Commission has also held public hearings on July 1st, October 27th and November 10th, for the presentation of proposed changes in the tax laws. Public notice of these hearings was given through the press; and special notice was also given to associations known to have given attention to questions of taxation. At these hearings the Commission was addressed by representatives of the following:

- The railroad companies.
- The Civic Federation of Chicago.
- The Chicago Real Estate Board.
- The Industrial Club of Chicago.
- Chicago Coal Dealers' Association.
- The Chicago Clearing House Banks.
- The Chicago Federation of Labor.
- The Teachers' Federation of Chicago.
- The School Fund Protective Association.
- The 25th Ward Good Government Club.
- The No Vote No Tax League, and
- The Public Policy League of Illinois.

While the time and the facilities at the disposal of the Commission were not adequate for a minutely exhaustive investigation of the operation of the existing tax laws, it is believed that by means of the public hearings, the written statements to the Commission, and the investigations of the Commission, a more comprehensive examination of the taxation problem in this State has been made than on any previous occasion.

IV—FINDINGS.

From the complaints which have been presented and from our study of the existing tax laws and their operation, we have reached the following conclusions as to the principal defects of the present revenue system and its administration:

1. That the assessed valuation of property for purposes of taxation is in the aggregate, not only a very small part of the true value of the tangible taxable property in the State, but is a considerably smaller fraction of the true value than that provided for in the present revenue laws; and that the results of such under-assessments are on the one hand an increase in the nominal rate of taxation, and at the same time a marked inequality in the assessment of different classes of property and of different pieces of property of the same kind owned by different persons.

2. The most numerous complaints and the most serious inequalities arise in the assessment and taxation of intangible personal property, such as moneys and credits, mortgages, bonds and stocks. While during the past decade there has been some increase in the assessment of intangible property, it is evident that such intangible holdings, which are easily transferable and where the assessment depends entirely on statements by the owner, cannot be uniformly or equitably assessed under the general property tax. If such property could be assessed on the same basis as tangible property, the taxes at the rates now levied (especially in cities) would amount to an unjust confiscation of from one-fourth to one-half of the income; and in some cases such extortionate taxes are in fact levied and collected from those who scrupulously obey the letter of the law. More often such classes of property to a large extent escape taxation altogether; and it is argued, with much cogency, that intangible property, such as stocks, bonds, notes and credits, are not, in any real sense, property, but are simply a series of claims or obligations secured by tangible property already subject to taxation; and that the attempt to tax property of this kind, in addition to and on the same basis as the tangible property, involves "double taxation" of the same property, or perhaps it is even taxed three or four, or many more times.

As a result of the present situation, there is a notorious evasion of the terms of the revenue law, which are unjust in principle and unenforceable in practice. The most deplorable consequence is the demoralizing influence of the hiatus between the written words of the law and its actual administration, which is well known and recognized both by public officials and our most highly reputed citizens. This situation inevitably leads to disrespect of the law in other fields; and calls for far-reaching changes in the present system of taxation.*

Our study of the tax systems of other states shows clearly that other methods of taxation than the general property tax are both more equitable and at the same time more successful as means of raising public revenue from intangible property. Special taxes on corporations and

*The experience of other states bears out fully our views of this matter. See appendix for opinions of other State Tax Commissions.

on mortgages and other kinds of intangible holdings are now used to a very large extent, especially in the larger eastern states, such as Massachusetts, New York, New Jersey, Pennsylvania and Maryland, and have also been introduced to some extent in Ohio, Wisconsin and Minnesota. But no such methods can be introduced in Illinois under the present constitutional restrictions requiring the taxation of all classes of property on an absolutely uniform basis. It therefore becomes necessary for any adequate change in the system of taxation that the constitutional provisions should be amended.

3. In the assessment of tangible property there are also evidences of important inequalities in the valuation of different classes of property, especially in the assessment of certain kinds of tangible personal property. Under the present system, what amounts practically to exemptions are granted at the discretion of the assessing officials. In regard to some kinds of tangible personal property, exemptions would seem to be advisable, and for other kinds other methods of taxation would be better than the present *ad valorem* system. But here again no changes from the present basis can be legally made without a change in the constitutional provisions.

4. The administration of the tax laws is also defective in various respects. Our attention has been called especially to criticisms of the State Board of Equalization and of the local assessors in counties under township organization.

While there may be some justice in such criticisms, it is only fair to state that, in the opinion of this Commission, the State Board of Equalization has performed its duties as effectively as any one had a right to expect, considering the circumstances under which it has had to work. This Commission is of the opinion that the large membership of the Board, its elective character, its inadequate powers and the short time which is allotted to it to perform its duties, prevent it, and would prevent any similar board, from becoming a very efficient agent in the administration of the tax laws. A small, permanent, appointive body, giving its whole time to tax questions, with enlarged powers and exercising a considerable measure of supervision over local officials, would be a much more effective authority.

The local assessment of property is often entrusted to inexperienced and untrained officials, more or less subject to political influences and local pressure, and with no adequate supervision or instructions from State officials. The general supervision of local assessments by a permanent Tax Commission, as is here recommended, would be an important element in improving the local administration of the tax laws. The defects in local administration appear to be most serious in the case of town assessors; and officers chosen for larger districts and for longer terms would be better equipped for making impartial and more accurate valuations, and would be more free from political and local bias.

V—RECOMMENDATIONS.

Constitutional Amendment.—In view of our conclusions that any adequate changes in the bases of taxation in this State must be preceded by changes in the constitutional provisions, we recommend and submit herewith, for the consideration of the General Assembly, the following proposed amendment to the Constitution of the State of Illinois; to be added as section 14 of article IX of the State Constitution:

Section 14. From and after the date when this section shall be in force the powers of the General Assembly over the subject matter of the taxation of personal property shall be as complete and unrestricted as they would be if sections one (1), three (3), nine (9) and ten (10), of this article of the Constitution did not exist; *provided, however*, that any tax levied upon personal property must be uniform as to persons and property of the same class within the jurisdiction of the body imposing the same, and all exemptions from taxation shall be by general law, and shall be revocable by the General Assembly at any time.

This proposed amendment will not in itself make any change in the present system of taxation. It will simply remove some of the restrictions now placed on the General Assembly and make possible the enactment of statutory changes in the future.

Constitutional restrictions, such as those in the Constitution of Illinois, requiring the taxation of all property in proportion to valuation on a uniform basis, are to be found in many states. But the states with the most advanced and the most satisfactory systems of taxation have few or no restrictions of this kind; and the decided trend of opinion on the part of students of taxation problems is in opposition to such restrictions. The constitutions of Connecticut, New York, New Jersey, Rhode Island, Vermont and Iowa, have very brief general provisions relating to taxation, which practically do not restrict the powers of the legislature. The constitutions of Maine, Massachusetts, Pennsylvania, Maryland, Michigan, Wisconsin and Minnesota, have more detailed provisions; but all permit exceptions to the rule of uniformity in methods of taxation. It is in such states where there are few or no constitutional restrictions on the power of the legislature, that the most successful systems of taxation are in force in this country.

The First National Conference on State and Local Taxation, held at Columbus, Ohio, in November, 1907, adopted the following resolution in regard to constitutional restrictions on the power of taxation:

"WHEREAS, The greatest inequalities have arisen from laws designed to tax all the widely differing classes of property in the same way and such laws have been ineffective in the production of revenue; and

"WHEREAS, The appropriate taxation of various forms of property is rendered impossible by the restrictions upon the taxing power contained in the constitutions of many of the states;

"Resolved, That all state constitutions requiring the same taxation of all property, or otherwise imposing restraints upon the reasonable classification of property, should be amended by the repeal of such restrictive provisions."

This Commission has not considered it advisable to recommend the removal of all restrictions on the power of the General Assembly of

Illinois. Under the proposed amendment the taxation of every person or corporation in proportion to the valuation of real property owned will still be required; and in other respects the provisions of Article IX of the Constitution of 1870 will remain for the most part unchanged. The amendment recommended will, however, place it in the power of the General Assembly to classify for purposes of taxation the various kinds of personal property, tangible and intangible; and will permit the General Assembly to provide special methods for taxing distinct classes of personal property, subject to the limitation that such taxes must be uniform in regard to all property of each class.

This Commission has not considered it desirable to attempt to discuss or to recommend the specific legislation that should be enacted, if this amendment to the State Constitution is adopted, for the reason that there has not been sufficient time since its appointment for the consideration of such legislation. There will be important differences of opinion as to what changes are most desirable; and further investigation and discussion will be needed to reach an agreement.

It may, however, be pointed out that, under the proposed amendment, it will be possible for the General Assembly to provide for special taxes on intangible property such as are now successfully used in Pennsylvania and Maryland; or to establish a special recording tax on mortgages, such as is now in force in New York and Minnesota, and is markedly successful, both as a means of raising public revenue and in taxing such property equitably and uniformly.

The proposed constitutional amendment will also permit the General Assembly to establish special methods for the taxation of corporations, such as those now employed in New York, Pennsylvania, Ohio and other states, in place of the method now used in this State of assessing the capital stock of corporations, which yields no substantial amount of revenue at the present time.

It will also permit the General Assembly to provide for special methods of taxing certain classes of tangible personal property, such as grain and stock in trade; or to grant exemptions, as, for example, in the case of household furniture, such as are granted in other states.

These suggestions indicate what will be possible if the proposed amendment is adopted as part of the Constitution of the State. It will not necessarily lead to the adoption of all of these changes; but it will prepare the way for a further study of the relative merits of these various methods and will permit the adoption of such changes in the present system of taxation as seem to be best suited to the conditions in this State.

While the Special Tax Commission believes that the proposed constitutional amendment is a necessary first step before any adequate change in the methods of taxation can be made in the revenue laws of this State, it unites in recommending important changes in the administration of the present tax laws, which can be enacted under the present constitutional provisions. These recommendations include the establishment of a permanent State Tax Commission to take the place of

the present State Board of Equalization, and with added powers, and the substitution of county assessors in place of town assessors, in counties under township organization.

Proposed Tax Commission.—The bill which accompanies this report provides that there shall be established, in place of the present State Board of Equalization, a State Tax Commission, to consist of three members to be appointed by the Governor, with the advice and consent of the Senate, for terms of six years, at a salary of \$7,500 per year for each member. Provisions are proposed which are intended to make this Commission, so far as possible, a nonpartisan body; and no member is to be permitted to engage in any other occupation or business while a member of this Commission.

We recommend that the proposed Commission shall be given, in the first place, all the powers and duties of the present State Board of Equalization, including—

(a) The power to equalize the aggregate assessed valuations of property in the several counties of the State;

(b) To value and assess the "railroad track" and "rolling stock" of railroads, as provided by law; and

(c) To value and assess the capital stock of corporations organized under the laws of Illinois, as provided by law.

In addition to the powers of the present State Board of Equalization, this Commission recommends that the proposed State Tax Commission shall have general supervision of the administration of the assessment and tax laws of the State; and more specifically shall have the following powers and duties:

(a) To prescribe forms for assessment books, uniform accounts and financial and statistical reports of local tax officials, with power to require reports and to examine books and accounts.

(b) To confer with, instruct and advise local assessors as to their duties, visiting each county as often as necessary and practicable.

(c) To require individuals and corporations to furnish information as to capital stock, assets and liabilities, etc., as required by law.

(d) To direct proceedings and prosecutions against public officials and officers or agents of corporations and others for neglect or failure to comply with the tax laws or orders of the Commission.

(e) To hear and determine appeals from the action of county boards of review, with power to summon witnesses to appear and give testimony and produce records, books and documents.

(f) To appoint special assessors and direct the reassessment of property in any taxing district where it appears, on complaint and after investigation, that the original assessment was not substantially just and equitable.

(g) To investigate at any time on its own initiative the efficiency of the administration of the tax and revenue laws; and for this purpose to have power to summon and examine witnesses on oath.

(h) To confer with the Governor on the subject of taxation and the administration of the tax laws, and to furnish him with such information relating thereto as he may require.

(i) To investigate the tax laws and their operation in other states and countries, and to recommend to the General Assembly such changes in the revenue laws as seem expedient.

(j) To report biennially to the General Assembly and to the Governor, its proceedings and decisions, with statistics of taxation and revenue, and recommendations.

(k) To make all necessary rules and regulations relating to procedure at its meetings and to carry out the purposes for which the board was created.

Tax commissions similar in their organization and powers to that proposed in the bill recommended by us, have been recently established in a large number of the more important and more progressive states. Such a board of tax commissioners was established in Indiana as early as 1871; in New York in 1896; in Michigan and Wisconsin in 1899; and within the past five years in New Jersey, Texas, Washington, Minnesota, Kansas, Alabama, Arkansas, Oregon and Ohio. All of these commissions have been effective in bringing about marked improvements in the administration of the tax laws.

There are naturally considerable differences in detail in the organization and powers of the permanent tax commissions in the several states where they have been established, but the various laws show a remarkable agreement in the main principles. Such recently established tax commissions are uniformly a small board, appointed either by the Governor alone, or by the Governor with the advice and consent of the State Senate, receiving salaries sufficient to secure the service of capable and experienced officials, who give their time and attention to the work of such commissions, and with adequate powers to supervise and investigate the local administration of the tax laws.

In recommending that the proposed Tax Commission for Illinois shall have considerable power of supervision over the local administration of the tax laws, we have followed in the main the provisions of the recent laws in other states. This system of supervision still leaves the primary responsibility for the original assessment of property in the hands of the local assessors, and it leaves intact also the present supervisory powers of the county boards of review. It gives, however, the State Tax Commission authority to advise and instruct the local assessors in the discharge of their duties, the power to take measures to see that the provisions of the revenue laws are enforced, the power to hear and determine appeals from the action of county boards of review, and in special cases, where the original assessment is shown to be unjust and inequitable, power to appoint special assessors and direct the reassessment of property in a particular taxing district. It is believed that such a system of supervision by a permanent State Tax Commission will result here, as it has in other states where introduced, in a decided improvement in the administration of the present laws.

County Assessors.—Our recommendation that county assessors be established in place of town assessors, in counties under township organization, substantially repeats the recommendation of the Revenue Commission of 1886; and will provide a more efficient means for making fair and equitable local assessments of property for purposes of taxation.

Respectfully submitted,

JOHN P. WILSON, President.
EDMUND J. JAMES, Secretary.

BEN F. CALDWELL,

A. M. CRAIG,

A. P. GROUT,

HARRISON B. RILEY,

B. L. WINCHELL.

TAX COMMISSIONER'S REPORT.

To His Excellency, the Hon. Charles S. Deneen, Governor of the State of Illinois:

SIR—While the undersigned heartily concurs in the recommendations of the Special Tax Commission, made in its report to his Excellency, the Governor, and is of the opinion that a great reform will be accomplished by the enactment into law of the measures therein recommended, still the undersigned is of the further opinion that such measures are not sufficiently far reaching to furnish an adequate solution of the tax problem in Illinois.

As the State inherently possesses all power for raising revenue not denied it by our Constitution, I believe there should be no limitation placed upon that power, except such as is necessary to protect the individual from tyranny and the business interests of the State from discrimination.

And that otherwise the State should have a free hand to meet the constant changes in the character and quality of taxable property and the skill and resourcefulness of tax-evasive persons by laws unhampered by constitutional limitations.

To this end it is believed that but two limitations upon the power of the State are necessary, instead of nearly the score thought advisable forty years ago.

These are:

First—That taxation shall be uniform upon similar classes of property by whomsoever owned within the territorial jurisdiction of the body imposing the tax; and

Second—That all exemptions from taxation shall be by general law, uniform as to the class of property exempted, and that such exemptions shall not be construed to be contracts but shall be at all times subject to modification or repeal at the pleasure of the State.

The state of New York has even fewer constitutional restrictions than those above indicated, and its tax system is the most flexible, productive and satisfactory of any of the states.

The suggestion above made is in harmony with the conclusion of nearly every tax commission with whose report I have been favored, and with what I consider the latest opinion of the authorities upon this subject.

I am further of the opinion that the proposal for the establishment of a permanent Tax Commission would be immeasurably improved if

to the powers of the Commission were added the power to appoint and remove all county and other local assessors and their clerks and assistants under reasonable civil service regulations.

The assessment of property calls for impartial, unbiased skill in ascertaining the existence and value of taxable property, and this can in my judgment be better done by an appointive officer than by one elected by the very people whom he is called upon to assess.

An appointive officer will rarely, if ever, lose his position by truthfully stating the facts, whereas an elective officer takes his official life in his hands if he uncovers a fraction of the facts.

An incapable or partial elective officer cannot be removed until the end of his term, while correction may be applied to an appointive officer forthwith.

Under this system the ultimate responsibility for irregular assessment is placed upon the Governor, and through his power of removal he has at hand the means for the speedy relief of the community from fraudulent, incompetent or ignorant assessment.

The power of taxation is as necessary to the existence of the State as police or military power, and should be as firmly and fairly exercised, but an elective system applied to the assessment of property for taxation is, in my judgment, responsible for as many evils as would exist should the State choose its militia or the cities their police by popular vote.

The movement for a shorter ballot may well be tried in the selection of assessors.

Chicago, Jan. 11, 1911.

Respectfully submitted,
HARRISON B. RILEY,
Tax Commissioner.

PROPOSED CONSTITUTIONAL AMENDMENT.

SEXATE JOINT RESOLUTION NUMBER 00.

Resolved, By the Senate of the State of Illinois, the House of Representatives concurring therein, That an amendment to Article IX of the Constitution of this State be and the same is hereby proposed, as follows:

Resolved, That Article IX of the Constitution of this State be amended by adding thereto a section to be numbered and known as section 14, and reading as follows:

Section 14. From and after the date when this section shall be in force the powers of the General Assembly over the subject matter of the taxation of personal property shall be as complete and unrestricted as they would be if sections one (1), three (3), nine (9) and ten (10) of this article of the Constitution did not exist; *provided, however,* that any tax levied upon personal property must be uniform as to persons and property of the same class within the jurisdiction of the body imposing the same, and all exemptions from taxation shall be by general law and shall be revocable by the General Assembly at any time.

Resolved, further, That the said proposed amendment to Article IX of the Constitution shall be submitted to the electors of this State for adoption or rejection at the next election of members of the General Assembly in the manner now provided by law.

DRAFT OF A BILL FOR AN ACT TO CREATE A STATE TAX COMMISSION AND TO DEFINE THE POWERS AND DUTIES THEREOF.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there shall be established a State Tax Commission, consisting of three (3) commissioners. They shall be appointed by the Governor with the advice and consent of the Senate, and shall regularly hold office for terms of six (6) years. But the first commissioners to hold office shall be appointed, on or before February 1st, 1913, for terms of two (2), four (4) and six (6) years respectively, and thereafter one (1) member shall be appointed every two (2) years. In case of any vacancy in the said commission before the expiration of the term of office of any commissioner, the unexpired term shall be filled by appointment by the Governor, and no advice or consent of the Senate shall be required unless the General Assembly shall be in session for at least thirty (30) days after any office of commissioner becomes vacant as

aforesaid. Not more than one (1) commissioner shall be appointed from any one county. Not more than two (2) commissioners shall be affiliated with the same political party, nor may any commissioner serve on or under any committee of any political party. No commissioner shall hold any other office under the laws of Illinois, or any other State, or the United States. No commissioner shall engage in any other occupation or business while a member of the commission. Each commissioner shall before entering upon the duties of his office, take the oath (or affirmation) prescribed by the Constitution of this State.

Section 2. From and after the expiration of the term of office of the present members of the State Board of Equalization, the members of said State Board of Equalization shall cease to be elected as now provided by law, and the said State Tax Commission as herein provided for shall thereupon be and become the State Board of Equalization and shall have all the powers and discharge all the duties now conferred by law upon the said State Board of Equalization.

Section 3. Appeals shall lie from the action of county boards of review to the said State Tax Commission, subject to such rules, regulations and restrictions as may be made in relation thereto by the said State Tax Commission. Upon the hearing of such appeals, the said State Tax Commission shall have power to consider the action appealed from *de novo*, and exercise all the powers that could be exercised by the county board of review in relation to the subject matter of the action appealed from. The said State Tax Commission shall have full power upon the hearing of any such appeal to summon witnesses to appear and give testimony under oath and to produce records, books and documents. The said State Tax Commission shall have full power and authority to make rules relating to the practice and procedure before it of the hearing of all such appeals and relating to the mode of taking and perfecting the same before the county board of review.

Section 4. The State Tax Commission herein provided for shall have power also, and it shall be its duty:

- (1) To exercise general supervision of the administration of the assessment and tax laws of the State.
- (2) To prescribe forms for assessment books, uniform accounts and financial and statistical reports of local tax officials, with power to require reports from them and to examine their books and accounts.
- (3) To confer with, instruct and advise local assessors as to their duties, visiting each county as often as necessary and practicable.
- (4) To require individuals and corporations to furnish information as to capital stock, assets and liabilities, and all taxable and other property, as required by law.
- (5) To direct proceedings and prosecutions against public officials and officers or agents of corporations and others for neglect or failure to comply with the tax laws or orders of the Commission.
- (6) To appoint special assessors and direct the reassessment of property in any taxing district where it appears, on complaint and after investigation, that the original assessment was not substantially just and equitable.
- (7) To investigate at any time on its own initiative the efficiency of the

administration of the tax and revenue laws; and for this purpose the said Commission shall have power to summon witnesses to appear and give testimony under oath and to produce records, books and documents.

(8) To confer with the Governor on the subject of taxation and the administration of the tax laws, and to furnish him with such information relating thereto as he may require.

(9) To investigate the tax laws and their operation in other states and countries, and to recommend to the General Assembly such changes in the revenue laws as seem expedient.

(10) To report biennially to the General Assembly and to the Governor, its proceedings and decisions, with statistics of taxation and revenue, and recommendations.

(11) To make all necessary rules and regulations relating to procedure at its meetings and to carry out the purposes for which the board was created.

Section 5. The State Tax Commission as herein constituted shall maintain an office in the city of Springfield in the State of Illinois, which shall be open to the public during each business day of the year from 9 o'clock a. m. to 5 o'clock p. m. The tax documents and records of the said Tax Commission shall be public records, and shall at all times during business hours be open to any person for inspection and examination. Any person may copy and take memoranda therefrom without fee or reward.

Section 6. The salary of each member of said State Tax Commission shall be seven thousand five hundred dollars (\$7,500) per year; *provided, however*, that said sum shall include all the compensation to which each of said commissioners shall be entitled for all services rendered as members of the State Board of Equalization. The Commission shall have power to appoint a secretary and such experts, assistants and clerks as it may deem necessary, to define their duties and determine the amount of their compensation. The members of the State Tax Commission shall be entitled to their actual and reasonable traveling expenses, not exceeding —— dollars (\$—) per day, when actually traveling in the performance of the duties imposed upon them by this Act. The members of said State Tax Commission shall neither use nor accept any free transportation, either within or without this State, from any common carrier. The salary and traveling expenses allowed to each member of said State Tax Commission shall be certified by each member to the Auditor of Public Accounts, who shall issue his warrant on the State Treasurer therefor. The compensation of the secretary of the Commission, the employees, clerks, assistants and experts employed by the Commission shall be certified by the Commission to the Auditor of Public Accounts, who shall issue his warrants on the State Treasurer therefor.

APPENDIX.

EXTRACTS FROM THE REPORTS OF TAX COMMISSIONS OF OTHER STATES
IN REGARD TO THE ATTEMPT TO TAX PERSONAL PROPERTY
UNDER THE GENERAL PROPERTY TAX.

Massachusetts Tax Commission of 1897,
Wisconsin Tax Commission, 1903,
California Commission on Revenue and Taxation, 1906,
Oregon Tax Commission of 1906,
New York Special Tax Commission of 1907,
Ohio Tax Commission of 1908,
Minnesota Tax Commission, 1908,
Rhode Island, Joint Taxation Committee, 1910.

MASSACHUSETTS.

Intangible Personal Property.—The most difficult part of the tax system, and that as to which there is most dispute, is the taxation of securities, cash assets, income, and other intangible personal property. Under this head come stocks and bonds of foreign corporations, money at interest, loans on mortgage of property other than real estate taxable in the state, bonds of Massachusetts corporations, and income from trade or profession. All these are by law now taxable. Shares in Massachusetts corporations and in banks, loans on mortgage of real estate taxable in the state, and deposits in Massachusetts savings banks, are not taxable directly to their holders.

Whatever may be the truth as to other parts of the tax system, it is admitted on all sides that this part is unsatisfactory. From every quarter there are demands for change. Some organizations maintain that such property is now taxed too heavily, and should be relieved; others, that it is too lightly taxed, and should be further reached. The distribution of the proceeds of the taxes on such property between the different cities and towns of the commonwealth is, in our opinion, clearly unjustifiable. Moreover, this is a part of the tax system which invites change, because it does not work with such certainty and regularity as to enable the taxpayers to accommodate their affairs to it. Any tax of long standing and of steady and unflailing operation, to which the affairs of taxpayers and of the community have been adjusted, should not be changed without strong cause. On the other hand, any tax which is uncertain and irregular in its operation, is not only objectionable in itself, but invites and justifies prompt and radical change.

Here, as elsewhere, the taxes are usually assessed by estimate or "doomage." It is not possible to state how many in the limited number of sworn statements refer specially to this kind of property, but the figures already cited as to the amount of intangible personality assessed by statement and by doomage show conclusively that the latter method is practiced in the overwhelming majority of cases. The amount of intangible personality assessed by statement in twenty-eight cities was \$7,311,778, while the amount assessed by doomage was \$53,060,699. In each of the cities a few persons of unusual conscientiousness make returns. Such persons are accordingly taxed fully, and, as a rule, much more heavily than their less conscientious neighbors. In the city of Boston, and to some extent in other cities, trustees not infrequently make returns, especially if their accounts are on record in the probate courts, and so are open to the inspection of the assessors. From the testimony which assessors have given before us, there is grave suspicion that sometimes sworn statements are falsely made, and that perjury is thus committed for the sake of evading or reducing taxation. But, after all, sworn statements, for whatever reasons made, are rare in proportion to the total assessment, and in practice the common method of taxing this sort of property, as of taxing other sorts, is "doomage" by the assessors.

It is obvious, however, that this method of taxation encounters, as to intangible property, exceptional and indeed almost insuperable difficulties. There are no such external indications of taxable liability as appear in the case of live stock, vessels, stock in trade or machinery. General reputations as to the possession of large means, or a mode of life indicating an ample income, do not necessarily signify anything as to taxable securities. The investments of a person of means may be in real estate within or without the State, or in Massachusetts stocks or mortgages, or in bonds of the United States. An ample income, indicated by general expenditure, may be derived either from such sources already taxed or not taxable, or from trade and profession, or from taxable securities,—these last two being taxable, but taxable at different rates. The assessors, hence, must rely on their knowledge and judgment in estimating the taxable property of this form. In a great and complicated society, with a mass of investments ramifying in all directions, the assessors are here confronted with a task which the best of them could not execute satisfactorily. Even the most capable, most experienced, and most conscientious assessors could not have sufficient knowledge and judgment. But only average capacity can be expected; experience is often lacking, and, even for conscientious assessors, the temptations to laxity are in many cases irresistible. Consequently, the taxation of this form of property is in high degree uncertain, irregular, and unsatisfactory. It rests mainly on guesswork; it is blind, and therefore unequal. Here is its greatest evil, though not its only evil. It is haphazard in its practical working, and hence demoralizing alike to taxpayers and to tax officials.*

*Massachusetts Tax Commission of 1897, pp. 57-59.

WISCONSIN.

TAXATION OF CREDITS.

Fundamental Principles.—As already shown, the laws of the state require the taxation of credits of every kind due from solvent debtors and the taxation also of all kinds of property other than credits, unless exempted for special reasons, without deduction or diminution in value on account of debts owing. In this respect the Wisconsin system is substantially the same as that of most of the other American states. In recent years the subject has been given careful consideration by economists and others well fitted by education and training to ascertain facts and reach correct conclusions. Their verdict is practically unanimous in condemnation of all laws requiring the taxation of credits as property—at least we have not learned of any fairly capable, unbiased investigator who has given such laws substantial approval. The primary conclusions upon which the general verdict of condemnation is predicated may be summarized in the following propositions:

(1) Laws requiring the direct taxation of credits as property without corresponding reduction in the assessment of the property of debtors necessarily result in duplication of values and double taxation, and cannot fail to produce inequality and injustice, so far as such laws may be enforced.

(2) Such laws are incapable of enforcement, except partially.

(3) When partially enforced, the injustice to those who are taxed is much greater than if all credits were taxed alike; and this whether the burden is borne by the few who are taxed or is shifted to their debtors.

(4) Incidentally, the deceptions and other practices resorted to in evading the attempted enforcement of such laws have a degrading moral effect in the community.

(5) Laws permitting the amount of credits assessed to be deducted from the valuation of the property of debtors do away with the evil of double taxation and for that reason are infinitely preferable to laws which do not permit such deduction.

(6) But under laws permitting such deductions the tax imposed upon the creditor is ordinarily shifted to the debtor in the form of higher interest or otherwise, with something added to cover the creditor's risk.

(7) Laws designed to prevent such shifting are impracticable and serve to injure rather than to benefit the debtor, the only person for whose protection they are intended.

* * * * *

It seems very clear that the only just and rational solution of the problem as to taxation of credits is to cease all attempts to tax them; in other words, to exempt them from taxation. This would not be an exemption in any true sense, for there is really nothing to exempt. Credits are property for purposes of taxation by legal fiction only. The proposition, therefore, is not to exempt property, but to abolish the fiction.

In the report of this commission to the Legislature of 1901, in speaking of taxation of so-called intangible property, including credits, it is said:

The time is perhaps not far distant when a better understanding of these questions will be had and when there will be a more distinct demand than now exists that much of the intangible property, so-called, which under existing practice is virtually exempt, shall be made expressly exempt from direct

taxation. * * * It may be remarked in this connection that a transition from virtual exemption under existing practice to substantially the same exemption by legislative act, would involve no disturbance in commercial or industrial conditions.

It is believed that there is a much better understanding of the subject of taxing credits now than two years ago. Something has been learned by the more rigid enforcement of existing laws during the past two years, and such enforcement has led to a great deal of discussion and thought upon the subject among the people of the state. Many persons have come to see and judge of the matter in its true meaning and significance. There is undoubtedly a "more distinct demand" for the abolition of the laws requiring the assessment of credits than ever existed before, and the time seems ripe for legislative action. It is earnestly hoped that such action will be no longer deferred.

It has been often suggested that this step should not be taken until something in the nature of a substitute could be worked out and enacted into law. But in the very nature of things there can be no real substitute for the taxation of credits. The tax upon credits is not a logical or essential feature of the general property tax system. The essential principle of the general property system is to tax *property*. The credit tax is not a tax upon property, but upon a mere fiction specially enacted for that purpose. In its relation to the general property system it has no logical connection; it is an excrescence, a monstrosity, having no basis in economic truth or in substantial justice; working only wrong and injury to individuals and disadvantage to the people as a whole. There can be no substitute for such a thing; there is nothing good in it to be retained by substitute; being wholly bad, it should be lopped off absolutely and without further delay.*

CALIFORNIA.

INEQUALITIES IN THE EXISTING SYSTEM OF TAXATION.

Failure to Reach Personal Property.—The constitution requires that *all property shall be taxed in proportion to its value*. This is not done, and is, in fact, an impossibility. The greatest inequality in the operation of our revenue system arises from the fact that personal property escapes taxation almost entirely. At the present time, including money and solvent credits, personal property constitutes only 18 per cent of the entire tax roll. In 1860 personal property constituted 46 per cent of the entire tax roll; in 1870 it was 39 per cent; in 1880, 26 per cent. The total amount of personal property assessed in 1897 was less by \$67,711,000, or 38 per cent, than the amount assessed in 1872; in fact, the assessment of personal property made in 1872—\$220,000,000—was the highest on record until 1903. Meanwhile the entire roll had increased over threefold. In 1880 the assessed value of personal property was \$174,000,000, and in 1901, \$282,000,000, while the total assessment roll increased in the same period from \$666,000,000 to very nearly \$1,600,-

*Wisconsin Tax Commission, 1903, pp. 114-115, 139-140.

000,000. Omitting the item of money and solvent credits, and the valuation of railroad property, which is made by the state board of equalization, we find that at the present time only between 10 per cent and 15 per cent of the entire tax roll is made up of personal property found by the assessors. It is utterly inconceivable that the assessment in this respect reflects the actual conditions. * * * In 1880 the per capita assessment of personal property was \$201; in 1890 it was only \$139; in 1896, \$122; and at the present time barely \$150. During the same time the per capita assessment of real estate increased from \$523 to about \$340 per capita. Such glaring absurdities are revealed by a study of the mere totals of the assessment rolls. * * *

In fact, it is certain that not more than 20 per cent of the taxable amount of money and solvent credits has ever found its way into the assessment rolls. It is an open question whether it is proper to tax money and credits at all. Certain it is that the experience of the state since the beginning has demonstrated that no matter what the law requires it is practically impossible to tax this class of property directly and as such. * * *

Turning now to other forms of personal property, we find considerable difficulty in attempting to ascertain the exact amount which escapes taxation, although we have ample evidence that a large part does escape. One of the classes of property which largely escapes taxation is "goods, wares and merchandise." In 1890 the state board of equalization said of this item: "Certainly the supply should keep pace with the increase of population. Since 1880 the population has increased 46 per cent, while the increase in the valuation of goods and merchandise in 1890 over that of 1880 is 27 per cent, and over that of 1883 only 6.06 per cent."

* * * * *

TAXATION OF MONEY AND CREDITS.

The Constitution Requires the Taxation of Money and Credits.—The constitution of the state provides that the word "property" shall include "money, credits, bonds, stocks, dues, franchises and all other matters and things * * * capable of private ownership." The code repeats the same provision, and further defines credits as "those solvent debts not secured by mortgage or trust deed, owing to the person, firm, corporation or association assessed." It is further provided that the taxpayer may deduct from the amount of his credits (but from no other part of his assessments) the amount of his debts due to *bona fide* residents of California; which debts are, presumably, subject to assessment against the creditor as solvent credits on his part.

Despite these stringent provisions and others intended to carry them into effect, such as compelling the taxpayer to state, under oath, all the money he has, the law is rarely enforced; and, as we have seen, but a very small amount of money and solvent credits is ever found on the tax roll. In all there is assessed only \$43,000,000 of money and solvent credits in the aggregate of taxed property of \$1,600,000,000, or only

2.7 per cent. Over 75 per cent of this is found in San Francisco alone, although the roll of San Francisco is less than one-third of the total roll of the state. Furthermore, what stands on the assessment roll as "money and solvent credits" is for the most part an assessment against the banks, and is not altogether what it purports to be, but is for the most part a more or less arbitrary and artificial attempt to cover the property of the banks. Only in the rarest instances are items such as money or solvent credits assessed against individual citizens.

This requirement of our law that money and credits should be taxed may therefore be set down as an *absolute failure*, and the question arises as to whether it can be enforced and whether, if it cannot be enforced, it should not be entirely repealed. * * *

It seems, then, to be futile to try to tax this class of property, and the underlying reason for the failure to reach it and for the objection which people in general have to paying it, is *probably to be found in the fundamental fact that it should not be taxed at all*. It is the universal opinion among authorities on public finance and economists in general that the laws relating to the taxation of this class of property, *eo nomine*, should be repealed.

The essential principles involved are very clearly recognized in the mortgage tax law of California and are further demonstrated by the experience which we have had in the administration of that law. Our mortgage tax, as laid down by the constitution, concedes that the taxation of the property pledged as security for a loan, and the taxation of the loan as well, would be double taxation, and therefore provides that a mortgage shall be treated as an interest in the property upon which it is a lien; and although it is to be assessed to the mortgagor, the mortgagor enjoys a deduction from the total assessed value of his property equal to the amount of his mortgage. This recognizes distinctively that there is but one piece of property, in which two persons are interested. The same thing is equally true of other forms of credit. If a man borrows money with which to purchase a stock of merchandise, there is a similar division of interests, and it is amply sufficient to tax the merchandise as a whole and to pay no attention to the credit. If a tax is levied on the credit, then the borrower should be allowed to deduct from the goods he bought with the money borrowed an amount equal to the credit, which might then be assessed in the name of the creditor.

Our experience with the taxation of mortgages has demonstrated beyond a peradventure, or a doubt, that the holder of the property pays the entire tax. He pays taxes not only upon that part of the property assessed to him, but upon the mortgage as well, the latter in the form of a higher rate of interest than he would otherwise have to pay. If our tax laws could be enforced in regard to the taxation of credits, approximately the same results would occur. The rate of interest on all loans would be enough higher to enable the lender to pay the tax and also to compensate him for any additional risk which this method of taxation involved, and for any additional trouble to which he might be put by being compelled to pay the tax. The law, as it at present stands in California, requires not only the assessment of the property held by

debtors and purchased by them with the money they have borrowed, but also the taxation of the credits; and this, if enforced, would necessarily result in a duplication of values and in double taxation.

The amendment to our constitution prepared by the committee of forty in San Francisco and passed by the last legislature, which came up for the direct vote of the people in November of this year [1906] proposes for five years to permit the borrower and the lender, in the case of a mortgage on real estate, to make any contract they please as to which of them shall pay the tax. The result of this, if adopted by the people, will be—as shown by the experience of Massachusetts and Wisconsin, where similar systems are now in force—that the borrower will, in almost every case, elect to pay all the taxes himself and thus secure the loan at the lowest rate of interest that the market can afford, uncomplicated by any considerations in regard to taxes; while the lender will, as is inevitable, reduce the rate of interest by an amount corresponding to the tax. The same privilege which will, if the amendment be adopted, be extended to credits secured by mortgages on real estate, should be extended to other credits, for they all have essentially the same economic character.

Although credits may be, from the point of view of law, included within the term "property," they are not property in any true economic sense. The difficulty which has been felt by many people in understanding the nature of credits compared with other property, so far as their treatment in the revenue system is concerned, arises from a confusion of thought as to the nature of the property tax. There are two ways of conceiving of the property tax, one of which makes it a personal tax and the other an objective or real tax (from *res*, meaning "things"). That is, we may start out with the idea of taxing every man in proportion to his property, in which case the property becomes the mere measure of the amount which the man ought to contribute, and the tax is essentially a personal tax. If this is the view held as to the nature of the property tax and the provisions of the revenue laws are shaped in accordance therewith, it would be natural and logical to include credits among the items of property by which a man's taxes are to be measured. This was undoubtedly the original view concerning the property tax. But on account of the general impossibility of administering a tax upon this plan, it has gradually been abandoned. The other view, that which regards the property tax as an objective or real tax, is to levy a tax upon all property wherever found, without regard to who may be its owner, make the tax a lien upon the property, and let the owner, or anybody else who is willing to do so, come forward and remove the lien by payment of the tax. Our California property tax is essentially a real tax, a tax on things and not on persons. Thus, property may be assessed to unknown owners, and an error in the name of the owner is not fatal to the assessment, provided the property is correctly described. The sole exception is this attempt to include credits among the items of property which shall be taxable and it is largely on account of the fact that this provision is out of accord with the rest of the law that it is found to be unenforceable.

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The objectors to this view may raise the question, Would you, then, permit the rich man to escape taxation entirely? Thus, one of the delegates to the constitutional convention in 1879 said in discussing the taxation of mortgages: "I know a man who loans \$240,000 and receives quarterly a high rate of interest, a rate of interest which has broken many a man who attempted to pay it; and, sir, he pays a tax on \$3,500, being the assessed value of the house in which he lives. And yet his income in the way of interest is nearly \$40,000 a year." This point of view overlooks the very important fact that the property in which the money lender is interested can be made to contribute its share of the taxes and thus indirectly, as a temporary partner in that property, the money lender himself is taxed. The \$40,000 a year, or any other sums received in interest, will be the net amount due after the payment of the tax. The attempt to make the money lender pay a tax out of that which, under the workings of the law of supply and demand, is the proper compensation for the use of his capital, is on a par with the attempt to enforce a usury law. We know that usury laws cannot be and never have been effective. So long as men are not obliged to loan their capital at a rate of interest fixed by the government, just so long will they not accept a rate of interest below the market rate. So long as men are not compelled, and cannot be compelled, to loan their money to those who will not pay the taxes thereon, it will be impossible to compel the money lender to pay the tax; and if he advances it in the first place, to prevent him from shifting it to the borrower in the form of a higher rate of interest.

Nor is there any inequality involved in thus permitting the money lender to take his return net without consideration of the taxes. The borrower has the property in his custody and, so long as he has it, he is expected to, and in his own interest will, pay all the cost of its maintenance and protection. He will see to it that it is protected, insured, repaired, and that everything else is done which is necessary to conserve it. Why should he not, therefore, so long as the property is in his possession and so long as he enjoys the use of it, pay among the other expenses of its maintenance the expense for government protection? If there is any proportion of the burden of the expense of maintenance, whether it be for taxation, insurance, repairs, or what not, which may equitably be charged against the creditor, we may rest assured that in the long run these charges will be transferred to him. The proper apportionment of expenses between the two parties interested will be adjusted by the operation of the great law of supply and demand, which controls and regulates the rate of interest. Any attempt to restrict the free operation of this law will be fooredoomed to failure. * * *

It may be urged that this part of our revenue law as demonstrated by the showing already made, is practically a dead letter, and that consequently there is no necessity for so long a discussion as this or for any repeal. This does not cover the entire case. The law, although practically a dead letter, is a continual threat against all credits, and when in rare instances enforced is enforced against those who are least able to bear the burden. Not the least of its ill effects is that it injures

the business community by compelling, now and again, the use of roundabout methods for the accomplishment of simple things and that it lessens the respect of men for ordinary law by compelling them to resort to underhanded means to accomplish things which are perfectly just and honorable, while the attempt to enforce the law by oaths or sworn declarations leads to a tremendous amount of perjury.

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The laws designed to prevent the shifting of the tax from the creditor to the debtor have always failed and always will fail, in the same way that the usury law fails; and moreover, they inevitably work to injure, rather than to aid the debtor, whose interests they are supposed to foster. Our California code has one paragraph which has been characterized by one of the code commissioners as an "academic statement." That paragraph, however, recognizes the essential truths which we have been trying to expound in connection with credits so far as those truths or principles are applicable to the taxation of stocks or bonds. That paragraph is section 3608, the first sentence of which reads: "Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations * * * shall be assessed and taxed. But no assessment shall be made on shares of stock in any corporation. * * *" This paragraph, academic or not, might be paraphrased with perfect accuracy as follows: *Credits possess no intrinsic value over and above the actual value of the property which they stand for and represent, and the assessment and taxation of credits and also of the property which secures them would be double taxation.**

OREGON.

Assessment of Personal Property.—Throughout this report the Commission has emphasized the fact that the general property tax was defective, in that when resorted to for the purpose of obtaining State revenue it became inefficient, owing to the undervaluation practiced for the purpose of avoiding a just apportionment of the tax. In the discussion of this subject it was pointed out, and will be more fully argued hereafter, that this State by its new method of apportionment has completely obviated this difficulty. The general property tax, however, is open to another very serious criticism. In practice it has been found that its administration results in the escaping of personal property from taxation. The investigation of the reports of the commissions of other states clearly shows that the general property tax results in the placing of the burdens of taxation upon real property. And that is true in this State. Under its operation the tax falls largely upon visible personal property, and that, too, in the hands of those that pay the tax on real property. "The taxation of personal property is in inverse ratio to its quantity; the more it increases the less it pays," says Professor Selig-

* California Commission on Revenue and Taxation, 1906, pp. 55-57, 272-276, 278-279, 281

man. This generalization is fully supported by the assessments of the older states for a series of years, and by a comparison of the proportions borne by personal property in the Western (newer) and Eastern (older) states.

Reforms in taxation have concerned themselves either with a remedy without departing from the general property tax itself or by completely discarding the general property tax and substituting in its place other methods of taxation. Where the general property tax has been retained it has been sought to reach personal property by an exhaustive listing system whereby the taxpayer is compelled to practically assess himself by furnishing a detailed list of all species of personal property owned by him. (At the present time this system is supposed to be in force in Oregon, but is not as thoroughly carried out as in other states where it is the rule.) This system in practice has not been effective. It results in evasion and deception; it is not calculated to reach intangible personal property. Being a self-assessment, and there being no means of verifying the statements of the taxpayer, the taxpayer withholds this property from his list and is secure against any detection of his perjury. It fails to reach property in transit. Deposits in banks escape taxation under it. It works a great hardship upon the person who honestly lists his property. It places a premium on fraud and perjury, and "its imposition is restricted to those who are not informed of the means of evasion or, knowing the means, are restricted by a nice sense of honor from resorting to them."

NEW YORK.

* * * The principal difficulty connected with our system of local revenues is the taxation of personal property. It is here that we find the chief derogation from the principle of equality in taxation. It is a universally accepted maxim that direct taxation of the citizen should be as nearly as possible in proportion to his ability to pay. The actual situation in New York involves in practice the very inverse of this principle. It is because results contrary to this principle are produced by our present methods of taxation that the people have demanded a substantial and just revision of the tax laws.

* * * * *

The advisory commission on taxation and finances appointed by the mayor of New York has recently made public its report on personal property taxation. We quote the following passage:

"So far as the personal property tax attempts to reach intangible forms of wealth, its administration is so comical as to have become a by-word. Its practice has come to be merely a requisition by the Board of Assessors upon leading citizens for such donations as the assessors think should be made, and is paid as assessed, or reduced, according as the citizen agrees with the estimate of the assessor. Such a method of collecting revenue, would be a serious menace to democratic institutions, were it not so generally recognized as a howling farce."

* Oregon Tax Commission of 1906, pp. 31, 32.

"But it is not a farce to those who are fully assessed. These are chiefly the widows and orphans, who are caught when their property is listed in the probate court, and the small investors who are not skillful enough to make non-taxable investments. The tax of one and one-half per cent is equivalent to an income tax of twenty-five per cent, on a six per cent investment. A general income tax of ten per cent would create a revolution—yet we take a quarter of their income or more, from the most helpless class in the community."

What is true of the city of New York is more or less true through the State, and it is true not only in the State of New York, but in every American state where the modern forms of economic and industrial life have supplanted the simpler conditions of a purely agricultural community.

We do not believe that the escape of personal property from assessment and taxation under the present system arises so much from the wickedness of our citizens or from the depravity of human nature or from the willingness of the owners of wealth to commit perjury and to debauch our tax officials, as it does from laudable, just and widespread sentiment to the effect that all should be taxed alike.

We are of the opinion that if our citizens generally could believe that they were being taxed fairly, as well as equitably, there would be few who would seek to evade the payment of their due share, but no one can be blamed who wishes to avoid paying more in proportion than his neighbors in the same class.

The experience of the State of New York in this regard is the experience of every other state and nation, except that as New York is the center of the nation's wealth and industry, and forms the chief type of the modern complex industrial organization, the breakdown of the personal property tax is more complete here than elsewhere. But the difference is only one of degree, and as the industrial systems of the other American states gradually approach that of New York, the fiscal situation is becoming the same. A general property tax upon the owners of personal property is everywhere, by legislators and economists alike, pronounced to be under modern conditions ineffectual, and therefore inequitable and unjust. This is now so universally recognized by all those who choose not to be blind to actual facts, as to require no extended argument or comment.*

OHIO.

INEQUALITIES AMONG THE OWNERS OF PERSONAL PROPERTY.

The escape of personal property of all kinds from a fair or equal contribution to the public revenues has heretofore been pointed out. But when we come to consider intangible personality alone we find that its returns for taxation are merely nominal as compared with all other property. * * * the grand total of all moneys, credits, mortgages, stocks, bonds and other intangible property returned for taxation for the year 1906 was less than \$150,000,000, although the bank deposits

alone were about \$500,000,000. * * * all moneys returned for taxation in all the counties of the State for the year 1906, amounted to \$59,984,337; * * * the value of all credits thus returned amounted to \$7,230,376, and of all stocks and bonds \$10,819,924. The value of all credits returned was \$34,000,000 less in 1906 than it was in 1890, and \$16,000,000 less than it was in 1870. The value of all stocks and bonds was \$2,575,000 less in 1906 than it was in 1880, and the value of all intangible property, including moneys, credits, stocks and bonds, as returned for taxation, was nearly \$8,000,000 less in 1906 than it was in 1890.

Comparing these returns of intangible property with the returns of merchants' and manufacturers' stocks, we find that the latter also largely escape taxation under existing laws.

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This widespread concealment of intangible property, increasing in amount year by year, is the most convincing proof of the failure of the general property tax. It shows that after more than fifty years of experience, with all conceivable methods in the way of inquisitory laws, severe penalties and criminal statutes, designed to force the owners of moneys and credits, stocks and bonds, to put their holdings upon the tax duplicate, not only is the percentage of such property returned less than ever before, but public sentiment seems to be more and more openly approving an evasion of the law. Such a condition of affairs is so manifestly wrong and so injurious to good government that its longer continuance is a grave injury to the State.

The chief iniquities that accompany an attempt to tax, by a uniform rule and according to its true value in money, intangible as well as tangible property, have often been stated. They may be summed up as follows:

First.—It punishes the honest.—The taxpayer who undertakes to make a full return of his cash, credits, stocks and bonds, is bound to return them at their true value in money, and this value is so apparent or so easily ascertainable in most cases as to permit no difference of opinion. A deposit in a solvent bank cannot be worth less than par; a note with good security by way of mortgage, or otherwise, is worth its face value; while a bond or a share of stock has generally a fixed market price. To list these classes of property at less than their value would be as plain a violation of the law as not to list them at all, and yet if the owner returned them for taxation and they were subjected to the prevailing rate, he would pay several times as much taxes as the owner of tangible property, which had been assessed at far less than its true value in money, and in many cases all his profits from such investments would be confiscated by the public authority. It is well known that with an average tax rate in most Ohio cities of from 3 to 4 per cent, the owner of cash in bank or of first-class industrial bonds, or of standard stock in a foreign corporation would thus, in some instances, not only be deprived of all returns upon his investment, but would pay a fine in addition for the privilege of such ownership.

* New York Special Tax Commission of 1907, pp. 6-8.

Second.—It rewards the dishonest.—A taxpayer who cares more for his property than he does for his oath will not include, in any return of his own making, property which he can easily hide and the existence of which no methods have yet been devised which are adequate to reveal. Justifying himself by the reflection that to confess the ownership of all his money, stocks and bonds will be to subject them to a levy beyond their earning power to pay, and knowing that it is as easy to conceal all as a toy of such property, he will return none.

Third.—It results frequently in double taxation.—This may not be true with respect to all intangible property, but an indisputable case of double taxation is found in the attempt to tax, at the same rate and by the same methods, both land and the mortgage upon it. If "A," owning a farm worth \$10,000, borrows \$5,000 upon it, he is required to pay taxes under the present laws of Ohio on the full value of the farm, while "B," who loans the money, pays taxes on the \$5,000 mortgage. This is not only double taxation, but it imposes the burden upon one who can least afford to bear it, for the owner of the land not only continues to pay taxes on its full value, notwithstanding the fact that he has left only a fifty per cent equity in it, but he pays an amount of interest on the mortgage which is computed upon the assumption that such mortgage is taxable. In other words, the borrower pays a higher rate of interest than he would if the mortgage were not subject to taxation, and this despite the fact that the mortgage is generally concealed by the mortgagor. A further result of this taxation of land and mortgages at the same rate is a discrimination against citizens of Ohio and in favor of citizens of other states. A resident of this State who lends money secured by a mortgage in Ohio is taxed upon the credit thus created, whereas, a non-resident, such as a foreign insurance company, is not taxed upon any indebtedness to him secured by a mortgage upon land in this State.

Fourth.—It is unjust to the owners of all other property.—The escape from taxation of fully ninety per cent of all intangible property, which is undoubtedly going on in Ohio today, increases by exactly its share the burden upon the owners of other property and particularly the owners of real estate which may be, and generally is, assessed for taxation below its true market value, but which, under no circumstances, can altogether avoid the duplicate.

Fifth.—It lowers the standard of integrity.—And this is the gravest complaint that can be brought against the present system. If the attempt to tax intangible property by the same methods as those which apply to other forms of property were a material benefit to the State, which it is not, instead of a material injury, which it is, such benefit could never compensate for the deplorable influence upon the moral sense of communities that results from a knowledge that false returns for taxation are made by citizens generally and disrespect for the law is shown on every hand.

In answer to these several objections to the uniform rule as applied to concealable property, it is sometimes asserted that if all such property were accurately and honestly returned for taxation, the rate would be

lower on all, and the inducement to evasion of the law would be removed. But the reply is that the present tax is so imminent and the prospect of a full return by all citizens is so remote that the individual taxpayer has not felt inclined to institute a reform which may turn out to be wholly at his own expense.*

MINNESOTA.

Defects in General Property Tax.—The existing system known as the general property tax is a tax upon property only. It assumes to convert all kinds of non-exempt property into money, and then sequesters a certain percentage of that money for public use. Theoretically, every dollar's worth of property pays its equal proportion of the tax. It is the antipode of a poll tax. It does not tax the man at all, but it taxes his property according to its convertible value in cash. It does not take into consideration either the character, desirability or use of the property, or whether it is productive or non-productive. Family wearing apparel, mechanics' tools, farm implements, pianos and cook stoves, sewing machines and automobiles, saloon fixtures and household furniture, the homestead and the wild land, the unoccupied lot and the business block are equalized in value and all bear a proportionate share of the burden of taxation. All property is taxed because it is property. But no tax is imposed upon the learning, industry, labor, skill or money-making ability of individuals, nor upon their business as such, nor upon the income arising therefrom, except as the surplus of such income accumulates or is invested in property. A merchant and a railroad president or other official may each derive an annual income of \$10,000 from the business in which they are respectively engaged. The merchant is taxed upon his stock of merchandise because it is property, but the official goes scot-free from all taxation, unless some surplus of his year's income remains on hand in the form of money or other property on May 1. There is no equality of taxation, no evenness of burdens, in such a system.

The general property tax imposed by our unamended state constitution is inelastic and non-progressive. It rivets the power of taxation to the antiquated theories and methods of a past century and prevents every movement towards reform or improvement.

What Might Be Accomplished Under the Amendment.

The most valuable feature of the [proposed constitutional] amendment is that it confers upon the legislature power to classify the subjects of taxation in separate groups, and to tax each group by itself regardless of the others, giving to the respective groups specific rates of taxation, or, which is the same thing, different percentages of valuation.

Of course, there would be no "equality" in such a system; every dollar's worth of property would not contribute its proportionate share to the public revenue; some kinds of property would be much more

* Ohio Tax Commission of 1908, pp. 23-28.

heavily taxed than other kinds; but all property of the same kind would be taxed alike, and the actual burdens of taxation would be so distributed as to fall lightest upon property necessary for the support or convenience of the people, and heaviest upon property which is unnecessary or undesirable so far as the general public is concerned.

Such a system would be a radical departure from the present general property tax. But it is not as novel as it might at first blush appear to be. It is the system adopted by the federal government in its customs and excise taxes, specific rates being imposed upon various kinds of property without any pretense of "equality" or "uniformity." In Minnesota every material change in taxation which has been made by constitutional amendment or otherwise has been away from the general property tax and upon the basis of the separate classification of property. The gross earnings tax on railroads, the insurance tax, the mortgage registry and inheritance taxes are of this nature.

Moreover, such a system is in fact in conformity with the universal practice in this State since its admission into the Union. Everybody knows that, despite the constitution and the statutes, property has never been assessed at its true value nor upon the same basis of valuation. Assessors invariably have been "easy" upon some kinds of property, and "hard" upon other kinds, adopting a crude system of classification of their own, and paying far more attention to the uses of property and its productiveness than to its actual cash value. Town boards of review and county and state boards of equalization, ignoring the law, have acquiesced in and more or less approved these methods.

This practice has been chaotic and far from uniform in the different counties; and it has been the difficult, almost impossible, task of the State board of equalization to reconcile the conflicting classifications and valuations. But the practice of classifying property and of valuing each class by itself has long been a fixed custom in the several assessment districts; the people have accepted and approved it. Who shall say that a fixed custom so universal does not at least furnish the suggestion of a better, if not the best, method of taxation? It may be wiser and easier to make the statutes legalize, regulate and harmonize the custom than to attempt by drastic legislation to force the custom to conform to the statutes.*

RHODE ISLAND.

The general property tax, which for many years has been general through the United States, and is, or has been, not a statutory, but a constitutional provision in many states, has proved ineffectual in producing revenue; unjust, because it places the burden upon the weak, the unwary, and the conscientious, while it allows the shrewd and powerful to escape; inadvisable, because it brings the law into disrepute, and debases the morals of the community.

*Minnesota Tax Commission, 1908, pp. 215-217.

Its failure in application has been a matter of concern not only to the theorist, but to legislators and to business interests. In all states, departures have been made from time to time, usually along the lines of supplementing the revenue by special legislation designed to derive an increase in revenue from taxing franchises, gross receipts, inheritances, by license fees, and other sources which were not, or could not be, reached under the general property tax system.

The ease with which intangible personality could escape taxation, and the large amounts of it which did escape, has attracted the attention of political economists and legislators, as well as those upon whom fell the unjust burden. They have sought to bring about equality by reaching the over-elusive personality, and legislatures have enacted stringent laws regulating the assessment and collection of this tax. Inquisitory laws of great severity, designed to bring to light everything taxable, with penalties attached, so severe as to be revolting, and even with provisions for the payment of a percentage to informers, have been placed upon the statute books with no avail so far as intangible personality was concerned, except to emphasize the inequality of the tax burden placed upon those not shrewd enough to escape. * * *

The objections to the present system of imposing a uniform rate of taxation upon all classes of personal property have appealed very strongly to the committee. Proceeding on the principle of the general property tax, we have attempted in Rhode Island, as has been done in other states, to collect the same tax from intangible personality as from tangible and real estate. Our laws do not take into consideration the fact that nearly all this so-called intangible property is already taxed once at its source—that the mortgage upon a piece of property is taxed when the property itself is taxed, and stocks likewise contribute to pay the property tax on the corporations which authorized the issue.

When we attempt to exact the same rate of taxation from securities of this character as we attempt to exact from merchandise, and do exact from real estate, we are not in reality taxing "all property alike." In the case of mortgages upon property located within this State, the double taxation is plainly apparent; and the principle is the same when the property consists of stocks, bonds and other securities on property located outside the State, which presumably is already taxed once in the State where located.

The result of the attempt to assess and collect a tax so manifestly unfair is a matter of history in this State. From the first to the last analysis it has proven to be a farce, and is rapidly growing to be more so. Not only do the holders of such property make every effort to conceal its true value from the assessors, but the latter have no means whatever of even estimating the value of such holdings.

It is inconceivable that a citizen of Providence, for instance, owning \$100,000 worth of 4 per cent bonds, on which he realizes a dividend of \$4,000 annually, is willingly going to pay \$1,650, or more than two-fifths of his income, as a tax on his investment, if he can possibly avoid it. That the majority of people are willing to pay a just tax has been demonstrated in other states, where the personality valuation has in-

creased many fold since the plan of moderate taxation for intangible personal property was adopted; and your committee believes that if such a rate should be adopted in this State, it would result in the voluntary uncovering of a large amount of property that has heretofore escaped taxation, and that in a very few years the income from this class of property, in a State so traditionally wealthy as Rhode Island, would exceed by thousands of dollars the revenue derived under the present uniform rate.*

* Rhode Island Joint Taxation Committee, 1910, pp. 12-14.



**END OF
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